

REMARKS

Claims 6, 8-10, and 31-37 are pending in this application. Claims 31, 34, and 35 are amended herein. Support for the amendment can be found throughout the application as filed, e.g., in the original claims and in the sequence listing at SEQ ID NO:3. No new matter has been added.

35 USC § 103

Despite the Examiner's indication to the contrary in a phone call with the undersigned on February 3, 2011, the rejection of claims 31, 34, and 35 as allegedly unpatentable over Davis et al. (WO 03/089624) or Davis et al. (7,317,087) in view of Takao et al. (JP 2004-208583) was maintained. Applicants continue to assert that the subject matter of the claims would not have been obvious over the cited references. However, applicants also submit that the rejection is moot, as Takao et al. is not available as prior art against the pending claims. The present application claims priority under 35 USC § 119(a)-(d) to Japanese application JP 2003-338331. The filing date of the priority document is September 29, 2003, which antedates the July 29, 2004, publication date of Takao et al. Applicants submit herewith an English translation of the Japanese priority document.

The priority document satisfies the enablement and written description requirements of 35 USC § 112, first paragraph, with regard to the pending claims. SEQ ID NOs: 2 and 6 of the present application are identically disclosed in the priority application. Further, the nucleic acid sequence of SEQ ID NO:3 in the priority document is identical to SEQ ID NO:3 in the present application. However, there is an error in the amino acid translation of SEQ ID NO:3 in the priority document, resulting in a premature stop at nucleotide 1378 (despite there being no stop codon at this point). In fact, the first stop codon in the designated reading frame of SEQ ID NO:3 is at nucleotides 1411-1413. This translation error was perpetuated in the polypeptide sequence of SEQ ID NO:4 of the priority document, giving an amino acid sequence improperly truncated at 430 amino acid residues instead of 441. Upon inspection, one of ordinary skill would recognize that the translation of SEQ ID NO:3 would continue with the codon beginning at nucleotide 1378 (GAA, which codes for glutamic acid) until reaching the stop codon beginning at nucleotide 1411 (TAG). This error would be obvious to the person of ordinary

skill, who is presumed to have access to the genetic code. When correctly translated, the full amino acid sequence encoded by the designated open reading frame of SEQ ID NO: 3 in both the priority document and the present application is identical to SEQ ID NO:4 in the present application. The present claims therefore are fully supported by the priority application, and Takao et al. is not available as prior art. Accordingly, applicants request withdrawal of the rejection.

Withdrawn Claims

Claim 32, 33, 36, and 37 were withdrawn pursuant to a species election made in response to the species election requirement of March 18, 2010. As the generic claims are presumably now allowable, applicants are entitled to have claims 32, 33, 36, and 37 considered in the present application.

Withdrawn claims 6 and 8-10 are drawn to methods of making or using the polypeptide of claim 31, and so are eligible for rejoinder once claim 31 is deemed allowable.

Rejoinder and examination of the withdrawn claims are respectfully requested.

CONCLUSION

Applicants respectfully submit that all claims are in condition for allowance, which action is requested. Applicants do not concede any positions of the Office that are not expressly addressed above, nor do applicants concede that there are not other good reasons for patentability of the presented claims or other claims.

Please apply any required charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 14875-0157US1.

Respectfully submitted,

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/RSMcQuade/

Ryan S. McQuade, Ph.D.

Reg. No. 61,358

Customer Number 26161
Fish & Richardson P.C.
Telephone: (617) 542-5070
Facsimile: (877) 769-7945
22648208.doc